

MICHAEL DONAHOE  
Deputy Federal Defender  
Federal Defenders of Montana  
Helena Branch Office  
50 West 14th Street, Suite 1  
Helena, Montana 59601  
Phone: (406) 449-8381  
Fax: (406) 449-5651  
Email: michael\_donahoe@fd.org  
Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL BLAKE DeFRANCE,

Defendant.

**CR 21-29-M-DLC**

**DEFENDANT DeFRANCE'S  
NOTICE OF SUPPLEMENTAL  
AUTHORITY L.R. CR 47.4**

**NOTICE**

The Ninth Circuit's decision in *United States v. Castro*, No. 22-30050, a District of Montana, Billings Division case published yesterday (June 26, 2023), vacates Benito Castro's sentence and remanded for resentencing in a situation where Castro pled guilty to being a felon in possession of a firearm in violation of 18 USC §922(g)(1).

The court held that Castro's prior Montana conviction for partner or family member assault (PFMA) under Mont. Code Ann. §45-5-206(1)(a) is not a crime of violence under the Sentencing Guidelines because the definition of "bodily injury" incorporated into PFMA includes more conduct than the "use of physical force". The court applied the categorical approach and found that under Montana's unique definition, bodily injury "includes mental illness or impairment," and Montana courts have concluded that one can cause "bodily injury" solely through the infliction of mental anguish unaccompanied by any actual or threatened physical force.

The court concluded that because it must determine whether PFMA categorically requires force, not whether Castro actually used it in his prior offense, PFMA is not a crime of violence under the Sentencing Guidelines.

Although the opinion in *Castro* centers on the force issue, it also supports Mr. DeFrance's notice arguments concerning whether a Montana PFMA should have been considered a lawful predicate sufficient to support a §922(g)(9) offense.

## **CONCLUSION**

WHEREFORE, Mr. DeFrance concludes his notice of supplemental authority pursuant to L.R. CR 47.4.

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RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of June, 2023.

/s/ Michael Donahoe

MICHAEL DONAHOE  
Assistant Federal Defender  
Counsel for Defendant

**CERTIFICATE OF SERVICE  
L.R. 5.2(b)**

I hereby certify that on June 27, 2023, a copy of the foregoing document was served on the following persons by the following means:

1            CM-ECF

2            Mail

1.    CLERK, UNITED STATES DISTRICT COURT

1.    JENNIFER S. CLARK  
      TIMOTHY J. RACICOT  
      Assistant United States Attorneys  
      United States Attorney's Office  
      101 East Front Street, Suite 401  
      Missoula, MT 59802  
      Counsel for the United States of America

2.    MICHAEL BLAKE DeFRANCE  
      Defendant

/s/ Michael Donahoe  
FEDERAL DEFENDERS OF MONTANA